IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 867 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI SOMCHAND PARMAR - Appellant(s)
Versus
RAMAVTAR B. SHARMA (ONWER OF JEEP NO. GJ-1-K-9578) & 1 - Defendant(s)

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Appearance :
MR BHARAT B SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS AMEE YAJNIK for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 14/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.MEHTA)

Dahyabhai Somchand Parmar, appellant, original claimant, has filed this appeal against the judgment and award dated 14.10.2005 passed by the Motor Accident Claims Tribunal (Aux.), Gandhinagar in MAC Petition No.154 of 1993. The Tribunal by its impugned award partly allowed the original application of the applicant and held that Ramavat B Sharma, owner of the jeep and United India Insurance Company, the Insurance Company of the jeep, shall pay jointly and severally the awarded amount of Rs.1,54,500/- to the claimant with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till realization.

2. The facts leading to filing of the claim petition are as under :-

2.1 In the claim petition, it is the case of the original applicant that he was travelling on his scooter bearing No. GCC 7116 and he was driving his scooter at Gandhinagar on the correct side of the road towards State Bank of India. At that time, one jeep bearing No.GJ-1-K-9598 came with full speed and opponent No.1 was driving the said jeep. It is the case of the applicant that the driver of the jeep was negligent while driving and he lost the control over the vehicle and hit the applicant's scooter from opposite side causing grievous injuries to the

applicant.

2.2 In the application, it was stated that because of the accident, he was immediately taken to the Civil Hospital, Ahmedabad where he was treated as an indoor patient at least for one and a half month during the period from 29.10.1992 to 10.12.1992 as he suffered crush injuries on his right upper limb and closed fractures of Lt. Metacarpals, etc. He has further stated that the jeep was driven so fast and, therefore, the impact was so powerful that the scooter was smashed with damage to the tune of Rs.10,000/-.

2.3 As regards the income, it has been stated that he was serving in State Bank of India as a Clerk cum Cashier in Gandhinagar Branch and he was drawing monthly salary of Rs.4,500/- and has claimed the compensation of Rs.5 lakhs with interest at the rate of 12% per annum thereon.

3. Opponent No.1 filed his reply at Exh.12 and denied the contents of the petition in toto and Opponent No.2 – Insurance Company filed its written statement at Exh. 18 and also denied the contents of the application. The applicant has produced several documentary evidence and also led oral evidence in this behalf.

3.1 The Tribunal after considering the documentary and oral evidence has come to the

conclusion that the applicant proved that he has sustained injuries as a result of rash and negligent driving of jeep driving by opponent No.1. As regards compensation, the Tribunal has considered the evidence of Dr Mukul D Pandit, an Orthopedic Surgeon who has stated that the applicant has permanent partial disability of 80% of Rt. Upper extremity and 6% disability of Lt. Upper extremity. The disability certificate is also produced at Exh.45. The injury certificate is also produced at Exh. 19 which reads as under :-

> "CLW 10 x 5 cm on Rt forearm over upper flex on orpect. Normal contour of Rt elbow lost. 2 x 2 cm allusion on Rt. Posterior orpect of elbow. All muscle, nerve & nesotes seem to be cut at level of wound. Radial artery not fct. Delay capillary circulation. Sensation -lst. Movement of finger absent. The lower end of humors & proximal end of Radio ulna exposed & crushed.
>
> X Ray 1720/9R :
> # Upper end of Radius & ulna, Posterior dislocation of Radius
> # 5^{th} & 4^{th} Metacarpal bone."

3.2 The doctor was examined at Exh.44. In the examination, he has stated that disability should be assessed at 80% according to the guidelines given in the Cassler Book. The applicant was also in the

Civil Hospital from 29.10.1992 to 10.12.1992. The learned Judge has on that evidence held that 40% should be given as a whole as far as the applicant is concerned.

4. As regards quantum, the applicant was 32 years and he was working as a Clerk cum Cashier in State Bank of India, Gandhinagar and was getting monthly salary of Rs.4,500/-. In view of the same, the learned Judge has reduced the earning capacity to the tune of Rs.1,800/- i.e. 45% of Rs.4,500/- and the yearly deduction would be Rs.1800 x 12 = Rs.21,600/-. The learned Judge has taken the multiplier of 5 as the applicant is still in service and it cannot be said that the injury has adversely affected his earning capacity and, therefore, under the head of future income, the learned Judge has assessed the compensation of Rs.21,600 x 5 = Rs.1,08,000/-. As regards pain, shock and suffering, Rs.25,000/- was awarded. As regards medical expenses, the Tribunal has awarded Rs.2,500/-; Rs.2,500/- for diet and transportation, Rs.3,000/- towards attendant charges and Rs.13,500/- towards actual loss of income; in all Rs.1,54,500/- (1,08,000 + 25,000 + 2500 + 2500 + 3000 + 13,500).

5. Mr Bharat B. Shah, learned advocate appearing on behalf of the original applicant has invited our attention to the disability certificate Exh. 45 and injury certificate Exh. 19 and also oral evidence of Dr Mukul Pandit at Exh.45. As per the

doctor, the right hand of the applicant above knee has been removed and, therefore, he has assessed 80% disability. As regards left hand, he has assessed 6% disability. Mr Shah has stated that as per the Workmen's Compensation Act, Schedule I, item 2 which provides list of injuries to result in permanent partial disablement where under Workmen's Compensation Act amputation below shoulder with stump less 8% tip of acremion is 80% disablement. The learned advocate for the appellant, therefore, submitted that in view of the medical certificate and oral evidence and provision of the Workmen's Compensation Act, the applicant should be given 80% disablement. We see considerable force in the argument of Mr Shah in this behalf.

6. Mr Shah further stated that as regards pain, shock and suffering, in the peculiar facts and circumstances of the case, the learned Judge has awarded on account of pain, shock and suffering Rs.25,000/- and looking to the injury and disability, particularly he was in the hospital for one and a half month, atleast Rs.75,000/- should be awarded on account of pain, shock and suffering.

7. On the other hand, Mrs Yagnik who appears on behalf of the Insurance Company has tried to support the judgment of the Tribunal in this behalf. According to her, the Tribunal has considered the entire oral and documentary evidence and also assessed disability as per the medical evidence.

According to her, when the applicant has suffered injury on one hand, the Tribunal has assessed 40% disability and thereby she has submitted that the award of the Tribunal is just and proper.

8. As regards pain, shock and suffering, the applicant has suffered amputation of right arm below the shoulder and was in the hospital from 29.10.1992 to 10.12.1992 and also he had to visit the doctor several times. We are of the view that under the head of compensation for pain, shock and suffering, Rs.50,000/- be awarded and Rs.10,000/- be awarded as attendant charges.

9. We have also considered the decision of a Division Bench of this Court in Ramanbhai Kalidas Darji vs. Babusing Thakore, reported in 2000 (2) GLH (UJ) 7 wherein the victim lost his hand from above elbow and the doctor assessed the disability at 95%. The question arose as to whether the same can be reduced to 50%. In that context, the Division Bench relied upon the judgment of the Apex Court in Pratap Narain Singh Deo vs. Shrinivas Sabata and Anr. Reported in AIR 1976 SC 222 wherein the Apex Court has held that, keeping the provisions of the Workmen's Compensation Act in mind, if the carpenter is injured and left hand above the elbow is amputed, the carpenter would not be able to work with one hand and, therefore, his disablement must be assessed totally and not partially. The Division Bench held that although the decision was under the Workmen's

Compensation Act, the principle made clear can well be applied to the motor accident cases and after relying upon the same, the Division Bench held that in the case on hand the disability must be assessed totally, and not partially.

10. Mr Shah is right in relying upon the said decision and in view of this judgment, he has submitted that though one hand has been amputed above the elbow, the doctor has assessed the disability at 80% and the Tribunal has assessed the same at 40% which should not be taken, but 80% disability should be taken.

11. We see considerable force in the submission of Mr Shah. He has also relied upon another judgment of this Court in First Appeal No. 468 of 1989 decided by this Court (Coram : Hon'ble Chief Justice Bhawani Singh and Hon'ble Mr Justice HK Rathod) on 27.10.2005. In that case the victim's left leg below knee was amputed and the Division Bench considering the illness increased the amount of compensation.

12. We have considered the oral and documentary evidence on record and the submissions made by learned advocates of both sides in this behalf. In view of the oral evidence of Dr Mukul Pandit, the medical certificate, injury certificate and the schedule to the Workmen's Compensation Act, particularly when the applicant was working with right hand and was working as a cashier, though he

may be continued in service in State Bank of India for various reasons, he was not able to carry on his work as cashier because for the work of cashier admittedly two hands are necessary. In view of the above, we are of the view that 80% disability assessed by the Doctor is reasonable and fair looking to the oral and documentary evidence, particularly the schedule to the Workmen's Compensation Act and the decision of this Court and the Hon'ble Apex Court.

13. In the present case, the claimant has claimed compensation of Rs.5,00,000/- on account of loss due to injury and the Tribunal has awarded towards future loss of income and permanent physical disability only Rs.1,08,000/-; pain, shock and suffering Rs.25,000/-; medical treatment Rs.2,500/-; rich diet and transportation Rs.2,500/-, attendant charges Rs.3,000/- and Rs.13,500/- towards actual loss of income. In all the Tribunal has awarded Rs.1,54,500/-.

14. We have considered the submissions of Mr Shah. We have also referred to the judgments he has relief upon. We have also referred to the disability certificate, injury certificate and documentary and oral evidence adduced by the claimant in this behalf.

15. In view of the aforesaid facts and circumstances of the case, we are of the view that if we take the monthly salary at Rs.4,500/- and if we

consider the disability at 80%, then the earning capacity of the claimant will come to Rs.3,600/- per month and the annual loss will come to Rs.3,600 x 12 = Rs.43,200/-. If we take the multiplier of 5, then the amount would come to Rs.43,200 x 5 = Rs.2,16,000/-.

15.1 As regards pain, shock and suffering, the Tribunal has awarded Rs.25,000/- which we have already increased to Rs.50,000/- and raised the compensation towards towards attendant charges to Rs.10,000/-. In all, the applicant will be entitled to the following amounts:-

Loss of Income	Rs.2,16,000/-
Pain, shock and suffering	Rs. 50,000/-
Attendant charges	Rs. 10,000/-
Loss of income for 3 months	Rs. 13,500/-
Medical treatment	Rs 2,500/-
Diet & transportation	Rs. 2,500/-

	Rs.2,94,500/-
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16. In this case, the accident occurred in October 1992 and the Tribunal has decided the matter on 14.10.2005. If we consider the rate of interest prevailing in the year 1992 onwards, we are of the view that if the interest at 9% per annum on additional amount is given from the date of the application till the payment, the same will be in the

interests of justice.

17. The appeal is partly allowed. The Insurance Company will deposit the additional amount of Rs. 1,40,000/- (Rs.2,94,500 – Rs.1,54,500) within three months from the date of receipt of the writ of this Court and after the amount is deposited, the Tribunal shall pass necessary orders for investment and disbursement in this behalf.

[M.S. SHAH, J.]

[K.M. MEHTA, J.]

sundar/-